

D.B.CIVIL SPECIAL APPEAL NO. 798/2006
Santkala v. Tarkha Ram & ors.

Date of order : 26.07.2007

HON'BLE THE ACTING CHIEF JUSTICE MR. J.M.PANCHAL
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr. G.R.Punia for the appellant

This appeal under Rule 134 of the High Court Rules is directed against the order dated November 3, 2006 rendered by the learned Single Judge in S.B.Civil Writ Petition no. 6243/2006 by which the order dated October 13, 2006 rendered by the Tribunal refusing to try issue nos. 3 and 4 as preliminary issues is upheld.

The respondent has filed an election petition under section 43 of the Rajasthan Panchayati Raj Act, 1994 challenging the election of candidates of Gram Panchayat, Berasar held in the year 2005. The appellant has filed reply to the election petition. On the basis of the pleadings of the parties five issues have been framed by the Tribunal for determination. Issue nos. 3 and 4 were as under :

- “ 3. Whether the election petition is in accordance with the provisions of the Rajasthan Panchayati Raj Act, 1994
- 4. Whether the election petition is maintainable in absence of necessary parties. “

The appellant submitted an application under Order XIV rule 2 of the Code of Civil Procedure and requested the Tribunal to decide issue nos. 3 and 4 as preliminary issues. The Tribunal heard the learned counsels for the parties. The Tribunal was of the view that determination of issue nos. 3 and 4 require investigation of facts and therefore, by order

dated October 13, 2006 rejected the prayer made by the appellant. Feeling aggrieved the appellant invoked the jurisdiction of this Court under Arts. 226 and 227 of the Constitution by filing S.B.Civil Writ Petition no. 6243/2006. The learned Single Judge has rejected the writ petition holding that determination of so called preliminary issues require investigation in facts which has given rise to the instant appeal.

This Court has heard Mr. G.R.Punia, learned counsel for the appellant. The learned counsel for the appellant submitted that in S.B.Civil Writ Petition no. 5844/2006 the learned Single Judge entertained the petition against similar order passed by the Tribunal and therefore, the petition filed by the appellant should not have been summarily rejected by the learned Single Judge.

Having regard to the facts of the case this Court is of the opinion that the order passed by the learned Single Judge in S.B.Civil Writ Petition no. 5844/2006 is of no avail to the appellant. There is no manner of doubt that determination of issue nos. 3 and 4 would require investigation of the facts . Under the circumstances, this Court does not find any substance in the appeal and is of the opinion that the appeal deserves to be dismissed summarily.

Accordingly, the appeal fails and is dismissed summarily.

(BHANWAROO KHAN)J.

(J.M.PANCHAL), ACTG. C.J

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